

DAVIS WRIGHT TREMAINE LLP

1 THOMAS R. BURKE (CA State Bar No. 141930)
2 DAVIS WRIGHT TREMAINE LLP
3 505 Montgomery Street, Suite 800
4 San Francisco, CA 94111
5 Telephone:(415) 276-6500
6 Facsimile: (415) 276-6599
7 Email: thomasburke@dwt.com

5 LAURA HANDMAN (appearing *pro hac vice*)
6 CHELSEA T. KELLY (appearing *pro hac vice*)
7 DAVIS WRIGHT TREMAINE LLP
8 1301 K Street NW, Suite 500 East
9 Washington, DC 20005
10 Telephone:(202) 973-4200
11 Facsimile: (202) 973-4499
12 Email: laurahandman@dwt.com
chelseakelly@dwt.com

10 LACY H. KOONCE, III (appearing *pro hac vice*)
11 KLARIS LAW
12 29 Little West 12th Street
13 New York, NY 10014
14 Telephone: (917) 612-5861
15 Email: lance.koonce@klarislaw.com

16 Attorneys for Defendants
17 GREENPEACE INTERNATIONAL (aka "GREENPEACE STICHTING
18 COUNCIL"), GREENPEACE, INC., DANIEL BRINDIS, AMY MOAS, and
19 ROLF SKAR

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19 RESOLUTE FOREST PRODUCTS, INC.,
20 RESOLUTE FP US, INC., RESOLUTE FP
21 AUGUSTA, LLC, FIBREK GENERAL
PARTNERSHIP, FIBREK U.S., INC., FIBREK
INTERNATIONAL INC., and RESOLUTE FP
CANADA, INC.,

22 Plaintiffs,

23 v.

24 GREENPEACE INTERNATIONAL (aka
25 "GREENPEACE STICHTING COUNCIL"),
26 GREENPEACE, INC., GREENPEACE FUND,
INC., FORESTETHICS, DANIEL BRINDIS,
AMY MOAS, MATTHEW DAGGETT, ROLF
SKAR, TODD PAGLIA, and JOHN AND JANE
DOES 1 through 20, inclusive,

27 Defendants.

28 Case No. 4:17-cv-02824-JST

**DECLARATION OF CHELSEA T. KELLY
IN SUPPORT OF DEFENDANTS'
ADMINISTRATIVE MOTION FOR
CLARIFICATION RE PLAINTIFFS'
MOTION FOR SANCTIONS [DKT. NO.
435] PURSUANT TO LOCAL CIVIL RULE
7-11**

Complaint Filed: May 31, 2016
Amended Complaint Filed: November 8, 2017

DAVIS WRIGHT TREMAINE LLP

DECLARATION OF CHELSEA T. KELLY

I, Chelsea T. Kelly, declare as follows:

1. I am an attorney at Davis Wright Tremaine LLP and have been admitted *pro hac vice* to practice before this Court. I am counsel for Defendants Greenpeace International (aka “Greenpeace Stichting Council”) (“GPI”), Greenpeace, Inc. (“GP Inc.”), Daniel Brindis, Amy Moas, and Rolf Skar (collectively, the “Greenpeace Defendants”) in the above-referenced matter. I submit this declaration in support of the Defendants’ Administrative Motion for Clarification re Plaintiffs’ Motion for Sanctions [Dkt. No. 435] Pursuant to Local Civil Rule 7-11, filed concurrently with this declaration.

2. Attached to this declaration as **Exhibit A** is a true and correct copy of Magistrate Judge Westmore's Standing Order.

3. The Greenpeace Defendants respectfully request that this Court: (1) clarify whether Plaintiffs' Motion for Sanctions Pursuant to Federal Rule of Civil Procedure 37(e) (Dkt. No. 435), filed on March 15, 2022, will be heard by Magistrate Judge Westmore and governed by the procedures set forth in Paragraphs 13-19 of her Standing Order; (2) deny Plaintiffs' motion without prejudice, or in the alternative, take the motion off-calendar; (3) order the parties to meet and confer regarding the issues raised in Plaintiffs' motion; and (4) direct the parties to re-file any outstanding disputes in the form of a joint letter to be heard in the first instance by Magistrate Judge Westmore.

4. Plaintiffs filed their Motion for Sanctions without any notice—let alone a good faith attempt to meet and confer with Defendants or a joint-discovery letter process. While Plaintiffs raised questions about Defendants’ Skype production in the past, Defendants answered these questions months ago and believed all Skype-related issues had been resolved.

5. In particular, the last time that Plaintiffs raised any question about Defendants' Skype production was in a November 26, 2021 letter, which Defendants responded to on December 14, 2021. Plaintiffs never responded to this letter, and certainly did not indicate that they intended to move for sanctions based on the issues raised therein.

1 6. To the contrary, Plaintiffs' Motion for Sanctions raises factually inaccurate issues
2 that they never brought to Defendants' attention. For example, Plaintiffs claim that "no Skype
3 messages have been produced between May 31, 2016 . . . until December 2016 . . ." Dkt. No.
4 435-1 at 3. This is plainly untrue. Defendants produced a plethora of Skype messages from this
5 time period. *See, e.g.*, GPDEFS00036584 (Skype conversation starting on May 12, 2016 and
6 going through April 3, 2017); GPDEFS00036888 (Skype conversation starting on May 4, 2016
7 and going through July 19, 2018); GPDEFS00041421 (Skype conversation starting on June 2,
8 2015 and going through February 15, 2018).

9 7. These are exactly the kind of issues that could have been properly addressed if
10 Plaintiffs had followed the Court's procedure and properly met and conferred before raising any
11 remaining issues via a joint discovery letter. Because Plaintiffs' motion appears to be premised
12 on multiple factual misunderstandings that likely can be resolved and/or narrowed by the parties
13 during the conferral process, the Greenpeace Defendants further respectfully request that the
14 Motion for Sanctions be either denied without prejudice or taken off calendar, and that the parties
15 be ordered to further confer on the allegations raised in Plaintiffs' Motion for Sanctions, and if
16 necessary submit a joint letter, in accordance with Magistrate Judge Westmore's Standing Order.

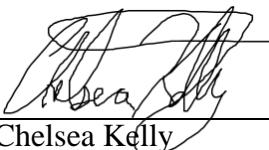
17 8. By contrast, Defendants have raised with Plaintiffs significant issues with *their*
18 document productions that suggests the high likelihood of spoliation by Plaintiffs. However,
19 Defendants have followed the procedures for such disputes mandated by the Court; have held
20 multiple meet-and-confer conferences and corresponded extensively; and have drafted a joint
21 discovery letter on these points that is currently being finalized by the parties. Plaintiffs' Motion
22 for Sanctions appears to be nothing more than an attempt to circumvent that process in order to
23 undermine Defendants' forthcoming motion.

24 9. On Thursday, March 17, 2022, I reached out to counsel for Plaintiffs by email to
25 confer as to whether Plaintiffs would stipulate to the relief sought in this motion. Plaintiffs'
26 counsel responded to that email on the same day, and did not stipulate to the relief requested, thus
27 necessitating the filing of this motion.

28

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 Executed this 17th day of March, 2022 at Washington, District of Columbia.

4
5 
6 Chelsea Kelly

7
8
9
10 DAVIS WRIGHT TREMAINE LLP
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28